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Remarks

Reconsideration of the above-captioned application is respectfully requested. The objection to the specification has been cured hereby and will not be further addressed. All pending claims have been rejected using Iida et al., and Claims 5 and 19 and their respective dependent claims have been rejected for being indefinite.

To overcome the Examiner's rejections, independent apparatus Claim 1 has been amended to specify that, based on identified predetermined characteristics including programming constructs, software components are listed in a ranked order that is representative of the ease or difficulty of restructuring the components for use in an Internet application. Independent Claim 28 recites identifying a characteristic in software components, with the characteristic being at least one programming construct selected from the group of constructs Terminal I/O constructs, External Flow Transfer constructs, Data I/O constructs, and Computational constructs. Claims 5 and 19 have been broadened as part of the clarification of these claims and will not further discussed. Claims 1, 4-28, and 30-39 remain pending.

Rejections Under 35 U.S.C. §102

Claims 1-5 and 8-13 have been rejected under 35 U.S.C. §102 as being anticipated by Iida et al., a reference not remotely relevant to the present invention, a point which is important to understand in analyzing the rejections. Claim 1 ranks software components in an order that represents the ease or difficulty of restructuring programming constructs for use in, e.g., Internet applications by sophisticated programmers; Iida et. al., in contrast, provides a user-friendly system to help a non-technical person construct a manual data entry form.

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With the above in mind, the relied-upon "filing frames" in Iida et al. discussed at column 9 are simply routines used to "file" data that are defined in a library by a software engineer and subsequently dragged and dropped onto a form being constructed by a non-technical person. The order in which they are executed to "file" something has nothing to do with how difficult it would be to restructure them; they are never restructured, and nowhere does Iida et al. ever suggest such a thing. Instead, the "filing frames" might be executed in an order in which they appear on an access tree, a tree about which the details of its construction are not clear from the poorly written text of Iida et al. Further, the tree itself does not define which of two "filing frames" appearing on the same level are executed first, col. 10, lines 12-18.

Still further, the examiner's conjecture that the list is based on how easy it is to find a particular "filing frame" is just that, a speculative guess that is not supported by Iida et al. Iida et al. simply does not address "ease in finding" filing frames. Taking the defects in the rejection yet another step further, regardless of whether Iida et al. executes filing frames based on ease of finding them, Claim 1 does not order constructs based on how "easy" it is "find" them, but rather based on the ease or difficulty in restructuring them.

To summarize the defects in the present rejection: in contrast to Claim 1, Iida et al. does not

- (1) restructure anything, much less
- (2) order software components based on the ease or difficulty of reconstructing programming constructs.

Moreover, to the extent that the examiner is attempting to equate ease of "finding" with ease of "restructuring" under the guise of broad claim interpretation.

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(3) Iida et al. does not appear to render its tree based on the ease of anything, much less "finding" the filing frames;

(4) no prior art evidence has been adduced to show that the skilled artisan would regard finding a software construct to be the same thing as restructuring it, see MPEP §2111.01 (claims must be interpreted as one skilled in the art would interpret them).

It may now be appreciated that various rejections of dependent claims are incorrect. For instance, the allegation that the limitation of former Claim 3 is taught because Iida et al. teaches restructuring the software components for use in a wide area network is false. Iida et al. does not teach restructuring anything much less for use in a network, wide area or otherwise. Likewise, the allegation that Iida et al. uses weights to rank its routines is a fabrication. Iida et al. nowhere teaches or suggests anything that the skilled artisan would remotely consider to be a "weight". Similarly, allegations that other dependent claim limitations are found in Iida et al. are without merit.

Rejections Under 35 U.S.C. §103

Claims 6 and 7 have been rejected under 35 U.S.C. §103 as being unpatentable over Iida et al. and Claims 14-39 have been rejected as being unpatentable over Iida et al. in view of Fontana et al. With respect to Claim 6, the Examiner admits that Iida et al. fails to teach or suggest its limitation but evades the requirements of MPEP §2143 by the expedient of taking "official notice" that "terminal I/O will take [the] most time to complete the I/O processing. Which means that there are more gaps (time) between two Terminal I/O construct compared to the Computational constructs which have the least gaps".

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That's quite a bit of Official Notice. For an examiner to properly take official notice of a fact, the fact must be "capable of such instant and unquestionable demonstration as to defy dispute" and thus should be "rare", MPEP §2144.03, particularly in the areas of technical facts in esoteric fields, *id.* In the present case, the examiner cannot hope to persuade that the esoteric technical facts of which official notice have been taken are "capable of such instant and unquestionable demonstration as to defy dispute". The rejection falls. To the extent that this improper tack is persisted in, a prior art showing in support of the allegation is hereby seasonably requested under MPEP §2144.03, along with, of course, the requisite prior art suggestion to combine the allegedly "well-known" facts in the particular combination being claimed.

The limitation in Claim 7 of altering weights of constructs based on actual use has been rejected not on prior art, nor on the above-discredited "official notice", but just because the examiner thinks this limitation obvious. That is an illegal position for an examiner to take. Such a rejection - disposing of a claimed element not found in the prior art just because of a personal opinion on the part of a patent examiner - has no regulatory basis. The examiner is encouraged to familiarize himself with MPEP §2143 *et seq.*

Claims 14-39 have been rejected as being obvious over Iida et al. in view of Fontana et al., used as a teaching of legacy software components, with the combination being rationalized on the ground that it would "preserve investments made in creating legacy systems".

The problems with the rejections under this section once again are many fold. First, Iida et al. is directed to providing an easy way for a non-technical user to create a data entry form, whereas Fontana et al. is directed to providing software engineers with a system for integrating software tools into a development framework. There is no suggestion pointed to in Iida et al. that it needs to integrate software tools and there

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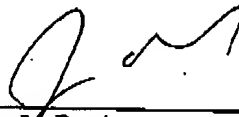
is no suggestion in Fontana et al. that it finds application in creating data entry forms. The requisite prior art suggestion to combine is missing.

Moreover, the proffered suggestion to combine - preserve investments made in legacy systems - is not suggested to be a problem in the context of Iida et al., the reference sought to be modified. Nowhere does Iida et al. suggest that anything about the relied-upon "filing frames" require legacy investment preservation, much less for integration with other systems as is the focus of Fontana et al. Without relevance to the reference sought to be modified, the proffered suggestion to combine (and, hence, the rejection) falls.

Still further, the proposed combination, even if made, would not result in the present claims. Neither reference teaches an ordered list indicating the relative ease of restructuring programming components for use on the wide area computer network site, so the proposed combination would not arrive at Claim 14. Accordingly, for this further reason the rejection falls.

The Examiner is cordially invited to telephone the undersigned at (619) 338-8075 for any reason which would advance the instant application to allowance.

Respectfully submitted,



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